

Storm Water Ordinance

Ordinance No. 4538

AN ORDINANCE TO AMEND CHAPTER 33, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO ESTABLISH A NEW ARTICLE IV STORM WATER MANAGEMENT AND POLLUTION CONTROL. AND TO PROVIDE PENALTIES THEREFORE

WHEREAS, uncontrolled storm water drainage and discharge may have a significant, adverse impact on the health, safety and general welfare of the City of Memphis and the quality of life of its citizens by carrying pollutants into the receiving waters; and

WHEREAS, the City of Memphis is required by Federal Law, particularly Title 33 United States Code (U.S.C.), 1994 Edition 1342 (p) page 439 and 40 Code of Federal Regulations (CFR) Part 122.26, to obtain a National Pollutant Discharge Elimination System (NPDES) Permit from the Tennessee Department of Environment and Conservation for storm water discharges from the Memphis Municipal Separate Storm Sewer System (MS4).

WHEREAS, the NPDES Permit requires the City Of Memphis to impose controls to reduce the discharge of pollutants in storm water to the maximum extent practicable using management practices, control techniques and system design and engineering methods, and such other provisions which are determined to be appropriate for the control of such pollutants.

NOW THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Code of Ordinances, City of Memphis, be amended by establishing a new Article IV, to read as follows:

"ARTICLE IV. STORM WATER MANAGEMENT AND POLLUTION CONTROL."

DIVISION 1.

GENERALLY

PART I

SEC. 33-200 PURPOSE

1) It is the purpose of this Article to protect, maintain, and enhance the environment of the City of Memphis and the short-term and long-term public health, safety, and the general welfare of the citizens the City of Memphis by controlling discharges of pollutants to the City of Memphis MS4 and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including without limitation, lakes, rivers, streams, ponds, wetlands, and ground water of the City of Memphis.

2) It is further the purpose of this Article to enable the City of Memphis to comply with the NPDES Permit and applicable regulations (at 40 CFR 122.26) for storm water discharges.

SEC. 33-201 DEFINITIONS

For the purpose of this Article the Following terms, phrases and words and their derivatives, shall have the meaning given herein:

Accidental Discharges - means a discharge prohibited by this Article into the MS4 which occurs by chance and without planning or consideration prior to occurrence.

Best Management Practices or BMPs - means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of storm water runoff.

BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Clean Water Act or the Act - means the Federal Water Pollution Control Act, as amended, codified at 33 U.S.C. 1251 et. seq.

Commercial - means property devoted in whole or part to commerce, that is, the exchange and buying and selling of commodities or services. The term shall include, by way of example, but not be limited to the following businesses: amusement establishments, animal clinics or hospitals, automobile service stations, automobile dealerships for new or used vehicles, automobile car washes, automobile and vehicular repair shops, banking establishments, beauty and barber shops, bowling alleys, bus terminals, and repair shops, camera shops, dental offices or clinics, day care centers, department stores, drug stores. Funeral homes, furniture stores, gift shops, grocery stores, hardware stores, hotels, jewelry stores, laboratories, laundries, and dry cleaning establishments, liquor stores, medical offices and clinics, motels, movie theaters, office buildings, paint stores or shops, parking lots, produce markets, professional offices, radio stations, repair establishments, retail stores, television stations and production facilities, theaters, truck or construction equipment service stations, truck or construction equipment dealerships for new or used vehicles, truck or construction equipment washing facilities and truck or construction equipment repair shops.

Erosion and Sediment Control Plan - means a written plan, including drawings or other graphic representations, for the control of soil erosion and sedimentation resulting from a construction activity.

Impervious - means not allowing the passage of water through the surface of the ground or ground covering or a substantial reduction in the capacity for water to pass through the surface of the ground or ground covering.

Industrial - means a business engaged in industrial production or service, that is, a business characterized by manufacturing or productive enterprise or a related service business. This term shall include by way of example, but not be limited to the following: apparel and fabric finishers, automobile salvage and junk yards, blast furnace, blueprint and related shops, boiler works, cold storage plants, contractor's plants and storage facilities, foundries, furniture and household goods manufacturing, forge plants, greenhouses, manufacturing plants, metal fabrication shops, ore reduction facilities, planning mills, rock crushers, rolling mills, saw mills, smelting operations, stockyards, stone mills or quarries, textile production, utility transmission or storage facilities, truck or construction equipment salvage or junkyards, warehousing, and wholesaling facilities.

Institutional - means an established organization, especially of a public or charitable nature. This term shall include, by way of example, but not be limited to, the following: churches, community buildings, colleges, day care facilities, dormitories, drug or alcohol rehabilitation facilities, fire halls, fraternal organizations, golf courses and driving ranges, government buildings, hospitals, libraries, kindergartens, or preschools, nursing homes, mortuaries, schools social agencies, synagogues, parks and playgrounds.

Manager - means the person designated by the City of Memphis to supervise the operation of the storm water management program and who is charged with certain duties and responsibilities but this Article, or his duly authorized representative.

Multi-Family Residential - means an apartment building or other residential structure built for three or more units or lots under common ownership, and condominiums of three or more units.

National Pollutant Discharge Elimination System or NPDES Permit - means a permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

Notice of Intent or N.O.I. - means a written notice by the discharger to the Commissioner of the Tennessee Department of Environment and Conservation, of his designee, that a person wishes his discharge to be

authorized under a general permit authorized by state law or regulation, particularly Tennessee NPDES General Permit number TNR050000 for storm water discharges associated with industrial activity.

Non-storm water - any discharge to the MS4 that is not; discharged pursuant to a NPDES permit; discharged pursuant to a State of Tennessee Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity, or any discharge as described at 40 CFR Part 122.26 (d) (2) (iv) (B) (1).

Person - means any individual, partnership, copartnership, firm, company, trust estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context.

Pollution Prevention Plans - means a written site specific plan to eliminate or reduce and control the pollution of storm water through designed facilities, sedimentation ponds, natural or constructed wetlands, and best management practices.

Significant Spills - includes, but is not limited to releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (at 40 CFR 110.10 and CFR 117.21) or section 102 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), (at CFR 302.4).

Storm Water - means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Management - means the collection, conveyance, storage, treatment and disposal of storm water runoff in a manner to meet the objectives of this Article and its terms, including, but not be limited to measures that control the increase volume and rate of storm water runoff and water quality impacts caused by man made changes to the land.

Storm Water Management Plan or SWMP - means the set of drawings and other documents that comprise all of the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques for the City of Memphis and as part Of this Article.

Toxic Pollutant - means any pollutant or combination of pollutants listed as toxic in 40 CFR Part 401 promulgated by the Administrator of the Environmental Protection Agency under the provisions of 33 U.S.C. 1317.

Variance - means the modification of the minimum storm water management requirements contained in this Article and the Storm Water Management Plan for Specific circumstances where strict adherence of the requirement would result in unnecessary hardship and not fulfill the intent of this Article.

Water Quality - means characteristics that are related to the physical, chemical, biological, and/or radiological integrity of storm water.

Sec. 33-202 ABBREVIATIONS

CERCLA - means the Comprehensive Environmental Response, Compensation and Liability Act in its original form or as amended.

CFR - means Code of Federal Regulations

U.S.C - means United States Code

SECS. 33-203-33-205 RESERVED

PART II

ENFORCEMENT AND ABATEMENT

SEC. 33-206 UNAUTHORIZED DISCHARGE A PUBLIC NUISANCE

Discharge of storm water in any manner in violation of this Article; or any violation of any condition of a permit issued pursuant to this Article; or any violation of any condition of a storm water discharge Permit issued by the State of Tennessee Department of Environment and Conservation is hereby declared a public nuisance and shall be corrected or abated.

SEC. 33-207 IMPROPER DISPOSAL

(A) It shall be unlawful for any person to improperly dispose any contaminant into the MS4. Contaminants include, but are not limited to the following:

- 1) Trash or debris;
- 2) Construction materials
- 3) Petroleum products including but not limited to oil, gasoline, grease, fuel oil, or hydraulic fluids;
- 4) Antifreeze and other automotive products;
- 5) Metals in either particulate or dissolved form;
- 6) Flammable or explosive materials;
- 7) Radioactive materials;
- 8) Batteries, including but not limited to, lead acid automobile batteries, alkaline batteries, lithium batteries, or mercury batteries;
- 9) Acids, alkalis, or bases;
- 10) Paints, stains, resins, lacquers, or varnishes;
- 11) Degreasers and/or solvents;
- 12) Drain cleaners;
- 13) Pesticides, herbicides, or fertilizers;
- 14) Steam cleaning wastes;
- 15) Soaps, detergents, or ammonia;
- 16) Swimming pool backwash including chlorinated swimming pool discharge;
- 17) Chlorine, bromine, and other disinfectants;
- 18) Heated water;
- 19) Animal waste, either from domestic animals or from feeder lot operations;

20) Known leaking sanitary sewers and connections which have remained uncorrected for more than seven (7) days;

21) Recreational vehicle waste;

22) Animal carcasses;

23) Food wastes;

24) Medical wastes;

25) Bark and other fibrous materials;

26) Collected lawn clippings leaves, or branches;

27) Silt, sediment, or gravel;

28) Dyes, except as stated in subsection (B)

29) Chemicals, not normally found in uncontaminated water;

30) Any hazardous material or waste, not listed above;

31) Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates.

32) Junk motor vehicles, as defined in subsection (C)

33) Leaking solid waste disposal containers.

It is not the City's intent to propose penalties for de minimus discharges that have no significant adverse impact on safety, health, the welfare of the environment, or the functionality of the City's storm water collection system.

(B) DYE TESTING

Dye testing is allowed but requires verbal notification to the City of Memphis' Storm Water Manager a minimum of twenty-four (24) hours prior to the date of the test. The City of Memphis and Shelby County governmental agencies are exempt from this requirement.

(C) JUNK MOTOR VEHICLES, DEFINITION THEREOF

"Junk motor vehicle" means any vehicle which shall include by way of example but not be limited to the following vehicle types:

automobiles, construction equipment, motorcycles, and trucks, which meets all of the following requirements:

1) Is three years old or older;

2) Is extensively damaged, such damage including, but not limited to any of the following: A broken window or windshield or missing wheels, engine or transmission;

3) Is apparently inoperable;

4) Is without a valid current registration;

5) Has a fair market value equivalent only to the value of the scrap in it.

SEC. 33-208 EXCEPTIONS, ALLOWABLE DISCHARGES

The following types of discharges shall not be considered prohibited discharges for the purpose of this article unless the Director of Public Works determined that the type of discharge, whether singly or in combination with others, is causing significant contamination of the MS4.

- 1) Potable water;
- 2) Potable water line flushing;
- 3) Uncontaminated water from crawl space, pumps or footing drains;
- 4) Lawn watering;
- 5) Residential car and boat washing;
- 6) Dechlorinated swimming pool water;
- 7) Materials placed as part of an approved habitat restoration or bank stabilization project;
- 8) Natural uncontaminated surface water or ground water;
- 9) Flows from riparian habitats and wetlands;
- 10) Common practices for water well disinfections; and other discharges as described at 40 CFR 122.26 (d) (2) (iv) (B) (1), some of which are described above.
- 11) Other types of discharges as determined by the Director of Public Works.
- 12) Unless otherwise prohibited by this ordinance, any discharge that could be made directly to "Waters of the State" without a Federal or State permit being required.

SEC. 33-209 ILLICIT CONNECTION, DEFINED

Any connection, existing or future, identified by the Director of Public Works, as that which could convey anything not composed entirely of surface and storm water directly to the MS4 is considered an illicit connection and is prohibited with the following exceptions:

- 1) Connections conveying allowable discharges as defined in SEC. 33-208.
- 2) Connections conveying discharges pursuant to an NPDES Permit (other than an NPDES Storm Water Permit).

SEC. 33-210 MONITORING AND INSPECTION

1) **MONITORING** The Manager shall periodically monitor the quantity of, and the concentration of pollutants in storm water discharges from the areas and locations designated in the City of Memphis Storm Water Management Plan and the NPDES Storm Water Permit.

2) **DETECTION OF ILLICIT CONNECTIONS AND IMPROPER DISPOSAL**

A) The Manager shall take appropriate steps to detect and eliminate illicit connections to the City of Memphis MS4, including the adoption of a program to screen illicit discharges and identify their source or sources.

B) The Manager shall appropriate steps to detect and eliminate improper discharges, including programs to screen for improper disposal and programs to provide for public education, public information and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.

3) INSPECTIONS

A) The Manager or his designee, bearing proper credentials and identification, may enter and inspect all properties for regular periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing, to effectuate the provisions of this Article, the Storm Water Management Plan, and/or the NPDES Storm Water Permit. The Manager or his designee shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times.

B) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas which no objection is raised. The inspector shall immediately report the refusal and the grounds to the Manager. The Manager may seek appropriate compulsory process.

C) In the event the Manager or his designee reasonably believes that discharges into the City of Memphis MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon request by the owner or representative.

D) At any time during the conduct of an inspection or at such other times as the Manager or his designee may request information from an owner or representative, the owner or representative may identify areas of the facility or establishment, material or processes which contains or may contain a trade secret. If the Manager or his designee has no clear and convincing reason to question such identification, the inspection report shall note that trade secret information has been omitted. To the extent practicable, the Manager shall protect all information which is designated as a trade secret by the owner or their representative.

SECS. 33-211--33-220 RESERVED

PART III

CONSTRUCTION ACTIVITY AND EROSION AND SEDIMENT CONTROL

SEC. 33-221 CONSTRUCTION ACTIVITY

All Construction Activity, defined below, shall be in compliance with all applicable requirements under this division of this Article.

If five (5) or more acres are disturbed by Construction Activity, an application shall be applied for under the "State of Tennessee's General Permit for Storm Water Discharges Associated with Construction Activity". If a Tennessee General NPDES Permit is applied for, a copy of the Notice of Intent (N.O.I.) shall be sent to the Manager of the Storm Water Management Section. To seek coverage under the Tennessee Department of Environment and Conservation General Permit, the N.O.I. shall be submitted to the following address:

Storm Water NOI Processing

Division of Water Pollution Control
401 Church Street
Tennessee Department of Environment and Conservation
Nashville, TN 37243-1534

The copy of the N.O.I. should be sent to the following address:

Attn: Manager / Storm Water Management
c/o Environmental Maintenance
664 St. Jude Place
Memphis, TN 38105-2800

SEC. 33-222 CONSTRUCTION ACTIVITY, REGULATED

1) It shall be unlawful for any person to permit any discharge of storm water from a Construction Activity from land owned or controlled by them on a total land area of one (1) to five (5) acres without a Letter of Intent (L.O.I.) submitted under this Article, or if five (5) or more acres are disturbed by construction activity, a General Permit for Storm Water Discharges Associated with Construction Activity from the Tennessee Department of Environment and Conservation, with a copy of the Notice of Intent (N.O.I.) provided to the Storm Water Management Section at the same address listed in SEC. 33-221

2) CONSTRUCTION ACTIVITY shall mean any clearing, grading, or excavating that results in the disturbance of more than one (1) acre of total land area. The term shall not include the following:

A) "Surface Mining" as the same as defined in Tennessee Code Annotated, Section 59-8-202:

B) Such minor construction activities as home gardens and individual home landscaping, home repairs, home maintenance work and other related activities which result in minor soil erosion:

C) The construction of single family residences when built separately on lots within subdivisions which have been approved and recorded in the office of the Shelby County Register that are not a part of a larger common plan of development; provided that excavation is limited to trenches for the foundation, basements, service and sewer connections, and minor grading for driveways, yard areas and sidewalks:

D) Individual service and sewer connections for single or two family residence

E) Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, daily operations, and livestock and poultry management practices and the construction of farm buildings:

F) Any project carried out under the technical supervision of the Soil Conservation Service of the United States Department of Agriculture:

G) Construction, installation or maintenance of electrical, natural gas, telephone and cable television lines or poles:

H) Installation, maintenance, and repair of any underground public utility lines when such activity occurs in an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard surfaced and a street, curb, gutter or sidewalk Permit has been obtained:

I) Construction, repair or rebuilding of track or other related facilities of a railroad company:

These activities may be undertaken without formal notice; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting those activities in accordance with the provisions of this Article and other applicable law including responsibility for controlling sedimentation and runoff.

3) BEST MANAGEMENT PRACTICES FOR CONSTRUCTION ACTIVITIES

The minimum standards for controlling erosion and sedimentation from the discharge of storm water from a construction activity, shall be set forth in the City of Memphis' - "Erosion Control Guide" as adopted and amended from time to time. A copy of this guide will be maintained on file in the offices of the Manager of Storm Water Management and the City Engineer. Until such time as this guide document is prepared, the guidelines in the Tennessee Department of Environment and Conservation's "Erosion and Sediment Control Handbook" shall be used.

SEC. 33-223 CONSTRUCTION ACTIVITY LETTER OF INTENT, REQUIRED

No discharge of storm water from a construction activity, whether temporary or permanent, shall be conducted within the corporate boundaries of the City of Memphis unless the developer has submitted either (i) a notice of intent to be covered under the State's general NPDES permit per storm water discharges associated with Construction Activity ("NOI"), if the construction site is at least five acres, or (ii) a letter of intent to be covered under this article ("LOI"), if the construction site is at least one acre, but less than five acres. A copy of the NOI or LOI shall be available for inspection by the Manager or Manager's representative on the construction site at all times during which construction activities are in progress.

SEC. 33-224 DATA REQUIRED IN CONSTRUCTION ACTIVITY LETTER OF INTENT

To be covered under a LOI, the developer shall submit the following information to:

Attn: Manager/Storm water Management
664 St. Jude Place
Memphis, TN 38105-2800

The LOI shall include:

- 1) Name, mailing address, and location for which the Letter of Intent is submitted;
- 2) Name, mailing address, telephone number, ownership status (Federal, State, Private, Public or other entity) of the developer responsible for the construction activity;
- 3) A site map, on 8 1/2 by 11 inch sized paper with boundaries 1-2 miles outside the site property, with the site and construction area outlined and with the receiving water or receiving storm sewer highlighted and identified.

Construction Activities may begin after submission of the Letter of Intent. One need not wait for approval from the City of Memphis. When the Construction Activity is finished the developer shall notify the Memphis MS4 and request termination of the LOI under the Article. Coverage under this Article terminates 20 days after the MS4's receipt of such notice.

SECS. 33-225--33-228 RESERVED

PART IV. MAINTENANCE, PRIVATE DETENTION FACILITIES

SEC. 33-229 PRIVATE INFRASTRUCTURE, DEFINED

Private detention facilities, defined in Chapter 6, page 01 of the City of Memphis' - "Drainage Design Manual", located in the City Engineer's Office shall be maintained so as to enhance water quality to meet the requirements of this Article and the NPDES storm water permit.

SEC. 33-230 MAINTENANCE CRITERIA

Maintenance of detention facilities shall consist of but not be limited to the following items: outlet cleaning, mowing, herbicide spraying, litter control, removal of sediment from basin and outlet control structures, and repair of drainage structures. Any material removed from a detention structure shall be disposed of in an environmentally sound manner. Herbicide spraying shall be conducted in an environmentally sound manner.

SEC. 33-231 ENFORCEMENT OPTIONS

Maintenance criteria not performed as listed in Sec. 33-230; that results in water quality problems, as determined by the Manger through inspections and/or sampling; that affect the MS4 may be subject to the provisions of SEC. 33-247.

SECS. 33-232--33-235 RESERVED

DIVISION 2

STORM WATER DISCHARGES FROM INDUSTRIAL SOURCES, REGULATED

GENERALLY

PART I

SEC. 33-326 PURPOSE

It is the purpose of this Division to control storm water runoff from industrial sources in order to minimize, to the maximum extent practicable, pollutants discharged from industrial sources into the MS4. This reduction will be achieved by a combination of management practices, control techniques, system design, engineering methods and plan review.

SEC.333-237 INDUSTRY, DEFINED

An industry is one defined in Division 1, SEC. 33-201 of this Article.

SEC. 33-238 RIGHT OF INSPECTION, DEFINED

Right of inspection is defined in Division 1, SEC. 33-210 of this Article.

SEC. 33-239 AVAILABILITY OF INFORMATION ON DISCHARGER TO PUBLIC; USE OF INFORMATION ACCEPTED AS CONFIDENTIAL

All information and data on a discharger obtained from reports, questionnaires, permits, monitoring programs, and from inspections shall be available to the public without restriction unless the discharger specifically requests confidential treatment and is able to demonstrate to the satisfaction of the approving authority that the release of such information would divulge information regarding processes or methods

which would be detrimental to the discharger's competitive position. Information accepted by the approving authority as confidential shall not be transmitted to the general public by the approving authority unless written permission has been obtained from the discharger. All information relating to the discharge from a discharger into the MS4 shall not be confidential information. All such information which is submitted to the approving authority shall be available to the public without restrictions.

SEC. 33-240 INFORMATION REQUIRED

As required in the Tennessee Multi-Sector Permit (TSMP) for Storm Water Discharges Associated with Industrial Activity and any NPDES Storm Water Permit, all industries discharging into the City of Memphis storm sewer system shall prepare a STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A copy of this SWPPP must be kept on the industrial site and available for inspection and copying at reasonable times by the Manager or his designee.

SEC. 33-241 SWPPP PLAN REQUIREMENTS

The SWPPP must follow, at a minimum, the outline of the plan listed in the Tennessee Multi-Sector Permit language or a facility NPDES Storm Water Permit language, whichever is applicable.

SEC. 33-242

1) Samples of storm water collected for compliance monitoring shall be representative of the discharge. Sampling locations will be those defined in the Tennessee Multi-Sector Permit or a NPDES Permit. Sampling and analyses shall be in accordance with 40 CFR Part 122.21 and 40 CFR Part 136 and/or applicable Permit language.

2) Samples taken by City personnel for the purpose of determining compliance with the requirements of this Article or rules adopted hereunder may be split with the discharger if requested before the time of sampling.

3) Sampling manhole or access. The Division may require a storm water Discharger to install and maintain at the Discharger's expense a suitable manhole or sampling facility at the discharger's facility or suitable monitoring access to allow observation, sampling, and measurement of all storm water runoff being discharged into the City storm sewer system. The manhole shall be constructed in accordance with plans approved by the Division and shall be designed so that flow measurement and sampling equipment can be installed. Access to the manhole or monitoring access shall be available to City representatives at all times.

SEC. 33-243 REPORTING

1) Any facility required to sample under either the TMSP or an NPDES Storm Water Permit shall provide a copy of the periodic monitoring report to the City as required in the applicable permit's language.

2) The Division may require reporting by dischargers of storm water runoff to the City storm water system, where an NPDES storm water permit is not required, to provide information to the City. This information may include any data necessary to characterize the storm water discharge.

SEC. 33-244 STORM WATER, DISCHARGE TO SANITARY SEWER, APPROVAL REQUIRED

Storm water discharges to the sanitary sewer are prohibited unless prior written approval is granted from the Industrial Pretreatment Section of the Division of Public Works.

SEC. 33-245 ACCIDENTAL DISCHARGES

1) In the event of any discharge of a material as defined in SEC.

33-207 in amounts which could cause a threat to public drinking water supplies, a "significant spill" as defined in "definitions" or any other discharge which could constitute a threat to human health or the environment, the owner or operator of the facility shall give notice to the Manager of the Storm Water Management department and the local field office of the Tennessee Department of Environment and Conservation as soon as practicable, but in no event later than the close of business on the day following the accidental discharge or as soon as the discharger becomes aware of the circumstances.

If an emergency response by governmental agencies is needed, the owner or operator should also call the City of Memphis', Emergency Management Agency, immediately to report the discharge. A written report must be provided to the Manager of Storm Water Management department within five (5) days of the time the discharger becomes aware of the circumstances, unless this requirement is waived by the Manager for good cause shown on a case-by-case basis, containing the following particulars:

A) A description of the discharge, including an estimate of volume.

B) The exact dates and times of discharge.

C) Steps being taken to eliminate and prevent recurrence of the discharge.

D) A site drawing should be rendered that shows the location of the spill on the impacted property, the direction of flow of the spill in regards to the topographical grade of the property, the impacted watercourse(s), and the property or properties adjacent to the spill site.

2) The discharger shall take all reasonable steps to minimize any adverse impact to the MS4, including such accelerated or additional monitoring as necessary to determine the nature and impact of the discharge. It shall not be a defense for the discharger in an enforcement action that it would have been necessary to halt, or reduce the business or activity of the facility in order to maintain water quality and minimize any adverse impact that the discharge may cause.

3) It shall be unlawful for any entity, whether an individual, residential, commercial or industry to fail to comply with the provisions of this section.

SEC. 33-246 FRAUD AND FALSE STATEMENTS

Any reports required by this Article or rules adopted hereunder and any other documents required by the City to be submitted or maintained by the Discharger shall be subject to the enforcement provisions of this Article and any other applicable local and State laws and regulations pertaining to fraud and false statements. Additionally, the Discharger shall be subject to the provisions of 18 U.S. Code Section 309 of the

Clean Water Act, as amended, governing false statements and responsible corporate officials.

SEC. 33-247 ADMINISTRATIVE ENFORCEMENT REMEDIES

The enforcement remedies enumerated herein shall be applicable to all Divisions of this Ordinance.

1) NOTIFICATION OF VIOLATION Whenever the Manager finds any permittee or person discharging storm water has violated or is violating this Article, of a Storm Water Permit or order issued hereunder, the Manager or his agent may serve upon said user written notice of the violation. This notice shall be by registered or certified mail with return receipt. Within ten (10) days of the receipt date of this notice, an

explanation of the violation and a plan for satisfactory correction and prevention thereof, to include specified required actions, shall be submitted to the Manager. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

2) CONSENT ORDERS The Director of Public Works is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the non-compliance. Such orders will include specific action to be taken by the permittee or person discharging storm water to correct the non-compliance within a time period specified by the order. Consent orders shall have the same force and effect as compliance orders issued pursuant to paragraph (4) below.

3) SHOW CAUSE HEARING The Director of Public Works may order any person who causes or contributes to violation of this Article of Storm Water Permit or order issued hereunder to show cause why a proposed enforcement action not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement should not be taken. The notice of the meeting shall be served personally or by registered or certified mail with return receipt at least ten (10) days prior to the hearing. Such notice may be served on any person, principal executive, general partner or corporate officer.

4) COMPLIANCE ORDER When the Director of Public Works finds that any person has violated or continues to violate this Article or any or order issued hereunder, he may issue an order to the violator directing that, following a specified time period, adequate structures and/or devices be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonable necessary and appropriate to address the non-compliance, including the construction of appropriate structures, installation of devices, self-monitoring and management practices.

5) CEASE AND DESIST ORDERS When the Director of Public Works finds that any person has violated or continues to violate this Article or any Permit or order issued hereunder, the Director of Public Works may issue an order to cease and desist all such violations and direct those persons in non-compliance to:

A) Comply forthwith; or

B) Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

SEC. 33-248 UNLAWFUL ACTS, MISDEMEANOR

It shall be unlawful for any person to:

1) Violate a provision of this Article;

2) Violate the provisions of any Permit issued pursuant to this Article;

3) Fail or refuse to comply with any lawful notice to abate issued by the Manager, which has not been timely appealed to the Director of Public Works within the time specified by such notice; or

4) Violate any lawful order to the Director of Public Works within the time allowed by such order shall be guilty of a misdemeanor; and each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of the provisions of this Article shall be punished by a fine as set out in Section 1-8 of the City of Memphis, Code of Ordinances.

SEC. 33-249 CIVIL PENALTY

Any person who performs any of the following acts or omissions shall be subject to a civil penalty as set out in Section 1-8 of the City of Memphis, Code of Ordinances per day for each day during which the act or omission continues or occurs.

- 1) Who fails to obtain any Permit required;
- 2) Violates the terms and conditions of such required Permit in #1 above;
- 3) Violates a final determination or order of the Director of Public Works; or
- 4) Violates any provision of this Article.

SEC. 33-250 PROCESSING-A-VIOLATION

- 1) The Director of Public Works may issue an assessment against any person or permittee responsible for the violation;
- 2) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the Director of Public Works a written petition setting forth the grounds and reasons for his objections and asking for a hearing in the matter involved before the Director of Public Works and if a petition for review of the assessment is not filed within thirty(30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;
- 3) Whenever any assessment has become final because of a person's failure to appeal the Director of Public Works assessment, the Director of Public Works may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment;
- 4) The Director of Public Works may consider the following factors:
 - A) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - B) Damages to the City, including compensation for the damage or destruction of the MS4, and also including any penalties, costs and attorneys' fees incurred by the City as a result of the illegal activity, as well as the expenses involved in enforcing this Article and the costs involved in rectifying any damages;
 - C) Cause of the discharge or violation;
 - D) The severity of the discharge and its effect on the MS4.
 - E) Effectiveness of action taken by the violator to cease the violation;
 - F) The technical and economic reasonableness of reducing or eliminating the discharge;
 - G) The economic benefit gained by the violator.
- 5) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the Commissioner of the Tennessee Department of Environment and Conservation for violations of T.C.A. 69-3-115; however, the sum of penalties imposed by this section and by T.C.A. 69-3-115 shall not exceed ten thousand dollars (\$10,000) per day during which the act or omission continues or occurs.

SEC. 33-251 APPEAL JUDICIAL PROCEEDINGS AND RELIEF

The Director of Public Works may initiate proceedings in any court of competent jurisdiction against any person who has or is about to:

- 1) Violate the provisions of this Article.
- 2) Violate the provisions of any Permit issued pursuant to this Article.
- 3) Fail or refuse to comply with any lawful order issued by the Director of Public Works which has not been timely appealed to the Director of Public Works, within the time allowed by this Article.
- 4) Violates any lawful order of the Director of Public Works within the time allowed by such order. Any person who shall commit any act declared unlawful under this Article shall be guilty of a misdemeanor, and each day of such violation or failure shall be deemed a separate offense and punishable accordingly. The Director of Public Works, with consent of the Mayor may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to the MS4 by any person, and to seek injunctive or other equitable relief to enforce compliance, with any lawful orders of the Director of Public Works or the Manager.

SEC. 33-252 DAMAGES, DISPOSITION OF FUNDS

All damages collected under the provisions of Section 33-250 and Civil penalties collected under the provisions of Section 33-249, following the adjustment for the expenses incurred in making such collections shall be allocated and appropriated to the Storm Water Management program for its administration.

SEC. 33-253 RECORDS RETENTION

All dischargers subject to this Article shall maintain and preserve for no fewer than five (5) years, all records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling, and chemical analyses made by or in behalf of the discharger in connection with its discharge. All records which pertain to matters which are the subject of any enforcement or litigation activities brought by the City pursuant hereto shall be retained and preserved by the Discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

SEC. 33-254 REQUESTS FOR RECONSIDERATION

A Discharger may request from the Director of Public Works to reconsider any determination made under this Article if there is reason to believe that sufficient data or information is available to support a different determination. Any request for reconsideration shall be accompanied by the data and the information that the Discharger used as a basis for the request. The Director of Public Works may then revise the initial determination based upon the submitted request. Any appeal of this final determination shall be made to a court of competent jurisdiction.

SECS. 33-255--33-260 RESERVED

CONFLICT

SECTION 2: BE IT FURTHER ORDAINED, that all other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Article are hereby repealed to the extent of such inconsistency or conflict.

SEVERABILITY

Section 3: BE IT FURTHER ORDAINED, that if any provision of this Article or its application to any person or property is held invalid, the remainder of the Article or the application of the provision to other persons or property shall not be affected.

ENACTMENT

SECTION 4: BE IT FURTHER ORDAINED, that this Ordinance shall take effect from and after that date it shall have been passed by the City Council, signed by the Chairman of the Council, certified and delivered to the office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

Attest:

Danny N. Wray Jerome Rubin

Comptroller Chairman of Council

11797